



Our Ref: SAL:PB:150623:_2288
Your Ref: A10000500 – 7-Eleven Stores Pty Limited
Your Contact officer: Rebecca Hall

22 May 2020

Ms Susan Philip
Director, Adjudication
ACCC
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CANBERRA ACT 2601

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Dear Ms Hall

7-Eleven Stores Pty Limited – Application for Authorisation AA100500 – Making a Submission

Thank you for inviting me to make a submission on behalf of the Franchisees whom I represent in the Class Action proceedings against 7-Eleven, pending in the Federal Court in Melbourne.

It is noted that an Interim Authorisation Decision has already been made. I have consulted with several of our clients, albeit that I have not had access to the content of Figure 1 and Figure 2



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appearing in 7-Eleven's Application for an Urgent Interim and Final Authorisation made by their solicitors, King & Wood Mallesons.

From that application, it is evident that:

1. There has been a significant downturn in the gross profit of 7-Eleven non-fuel stores, particularly in the CBD in each State where 7-Eleven operates and also in coastal resort areas;
2. Fuel stores have suffered a similar decline in revenue, and since commissions paid to Franchisees on fuel sales are minimal, the Franchisees survive on their convenience store sales which have also dropped significantly.
3. The empirical inquiries which I have conducted have caused me to believe that the reduction in revenue is in the order of between 25% and 45%.
4. Since the Franchisees only receive a minority share of the gross profit and themselves bear the overhead expenses except for rent, electricity and insurance, a substantial downturn in revenue hurts Franchisees disproportionately more, compared to the impact which it has on the Franchisor.
5. It is noted that in 7-Eleven's application, the social isolation policies introduced in response to the COVID-19 epidemic have "*translated to the Stores experiencing a severe and continuing decline in volumes of transactions and sales of merchandise.*" (page 2 of the Application).

6. 7-Eleven properly says at page 4 of the Application that:

“This is a question of long-term sustainability for certain of the Franchisees who are small business operators and who have sizeable external commitments (such as bank loan repayments).

“7-Eleven considers the only way to minimise the financial hardship experienced by these Franchisees and to ensure they are best positioned to resume trading as normal following the crisis, is to engage in an immediate and continuous dialogue with them to ensure the roster of Stores that are within the same catchment area is operated in a way that supports the viability of those Stores in the future.”

7. It concerns us that in Section 3 of the Application, under “*Proposed Conduct*”, 7-Eleven identifies “*Stores targeted for temporary closure or reduction of operating hours*” as being “*likely to be based on criteria relating to their location, trading performance and operational requirements. This may include criteria such as:*” (emphasis added)

- * a decline in merchandise sales “*to a certain extent*” (emphasis added);
- * whether the store is currently trading below a certain threshold;
- * whether the store is located within a certain distance from another trading store (particularly in the CBD); and
- * whether the store is not subject to any other operational requirement to continue trading.

It is then stated that “*the thresholds for each criterion may vary, based on whether the store sells fuel or not*”.

Even though the severe downturn is occurring to a varying degree but nevertheless, across the board, in correspondence addressed to the Franchisees by the General Manager of Retail Operations at 7-Eleven, Braeden Lord of 17 April 2020, advised that: “(O)n Thursday, 9 April 2020, we applied to the ACCC for an urgent authorisation **to co-ordinate with some of you** about temporary closures and trading hours.” (emphasis added)

“Again we are working hard to determine which of you we should approach in that regard, including establishing a fair and transparent criteria [sic] we will use for deciding which of you we should approach and when. Less than 5% of the network is expected to be impacted initially.” (emphasis added)

We submit as follows:

1. More than a month has passed since Braeden Lord’s letter was written and no “*fair and transparent criteria*” have yet been published or notified to the Franchisees in general.
2. It is not appropriate that fewer than 5% of the network should be beneficiaries of any alleviation of the conditions under which they currently have to operate, particularly since in its application to the ACCC, 7-Eleven has characterised a severe downturn as being general across its 700 store network (albeit that it affects some stores more than others).
3. In its letter of 17 April 2020 to the Franchisees, 7-Eleven identified “*a shared purpose*” for Franchisors and Franchisees alike, yet the Franchisees seem to be subordinate or excluded from the process of determining whether they should be allowed to close or operate for shorter hours.

4. We believe that stores should be able to nominate whether they operate for shorter hours or are able to close and if they cannot agree with 7-Eleven, then the matter should be promptly adjudicated by a Franchise Dispute Mediator from the Office of the Franchising Mediation Adviser, based on pre-set criteria.

It appears to us that Franchisees in general would be best served if they were able at least for the six month period proposed, to curtail their hours of opening by excluding the hours from 10.00pm to 6.00am, each day.

This is the period during which the greatest wage and salary burdens are being incurred because penalty rates apply to those employed to work in 7-Eleven stores during this time.

In 2018, we wrote to 7-Eleven and requested that a certain store be able to curtail its hours of opening because of crime prevention considerations and the risk to workers of being open during early morning hours, when they are most prone to being held-up. We found the 7-Eleven executive to be generally unamenable to the request to shorten the Store's hours of opening, even in response to a Police Report by Crime Prevention and Community Safety at Campbelltown which recommended it.

On analysis of the performance of the Campbelltown convenience (non-fuel) Store alone, measured in May 2018, the nightly average gross profit earned between the hours of 11.00pm and 5.00pm was just \$148.00 of which 7-Eleven, as the Franchisor received \$74.00.

After deducting the cost of wages (\$175.00), the Franchisee suffered a net loss of \$101.00 per night. Over just 650 stores (and we understand that there are now around 700), \$74.00 per night adds up to \$27,010.00 per annum or \$17,556,500.00 per annum in revenue for the Franchisor

across the network – while for the subject franchisee it represented a nightly loss (as well as personal risk), estimated over approximately \$36,865.00 per annum. All wage and salary costs are met by the Franchisee, as are cash losses and stock losses, suffered through theft, except to the extent that they may be covered by insurance.

Further Recommendation

I am instructed on behalf of the Franchisees whom I represent to submit that during the COVID-19 crisis, Store closures from between **10.00pm and 6.00am** should be permitted, even if there is not another 7-Eleven or similar convenience store in the vicinity.

It is important that transparent criteria are set, which make each store owner equally eligible for Store closure between such hours, particularly since, being forced to open during those hours, is a substantial drain on the profitability of 7-Eleven Stores, even in the best of times, let alone during the COVID-19 pandemic.

So long as a Franchisee's Store objectively meets the criterion of suffering a drop in gross profit of 10% or more, it should be entitled to close between the hours of 10.00pm and 6.00am, at least for the next six (6) months. 7-Eleven Franchisees trade on such low net profit margins that a 10% erosion of gross profit would imperil their financial survival and could render them insolvent.

If 7-Eleven is unwilling to concede such hours being truncated for an eligible store, then this matter should be referred to the Office of the Franchising Mediation Adviser for prompt adjudication, applying a formula which fundamentally depends upon whether the franchised store has suffered a 10% decline in gross profit.

With respect to stores being able to close altogether, we have not received requests for our assistance in contending for that to occur and therefore, do not make any additional submissions in respect of that issue.

Yours sincerely
LEVITT ROBINSON

Stewart A Levitt
Senior Partner

